IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.680 of 2007.

Date of decision: 30.05.2007

Bal Ram Jaiswal and others ....Petitioners

-Versus-

State of H.P. and another ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioners: M/s.Ajay Vaidya & T.S.Chauhan, Advocates.

For Respondents: Mr.M.S.Chandel,A.G. with Mr.J.S.Guleria, Law officer.

Deepak Gupta, J.(Oral)

The petitioners by means of this writ petition has challenged a notification dated 28.4.2007 issued by the State of Himachal Pradesh whereby the Himachal Pradesh Liquor License Rules, 1986 have been amended and the licencees holding L-14 and L-14-A licensees have been prohibited from selling beer.

It is the admitted case of the parties that since 1998 licencees holding license for L-14 and L-14-A retail vends were permitted to sell beer. A license in form L-14 is for retail vend of country spirit to be consumed on and off the premises. A license in form L-14-A is for retail outlet of country spirit to be consumed only off the premises. The Department of Excise and Taxation Department, Himachal Pradesh invited applications for grant of

retail outlets. The Department also issued the Excise Announcements and the relevant portions of the same read as follows:

> "4.(1)Subject to other conditions, the following licenses may be granted on fee fixed by the Excise & Taxation Commissioner in consultation with the Government as prescribed in the succeeding paras:-
> (a)A license in form L-2 for wholesale, and for retail vend of Foreign Liquor to the public only.
> (b)A license in form L-14 for retail vend of country spirit including beer for consumption 'on' and 'off' the premises and a license in form L-14-A for retail vend of country spirit including beer for consumption 'off' the premises,"
> xxxxxxxxxxxxx
>
> 38.Beer shall be sold in urban area in departmental stores etc. also in addition other liquor vends like L-2, L-14, L-14-A and L-3, L-4 and L-5 etc. Such store shall have to obtain license in form L-10-BB separately under Excise Act. Such licensees shall obtain the supply of beer from L-1B and L-1-C on payment assessed fee as prescribed."

The Excise and Taxation Commissioner also issued notice inviting applications for the retail sale of country liquor L-14 & L-14-A and one of the conditions therein reads as follows:

> "Beer shall be sold in retail from L-2 licensed outlet and from L-14 and L-14A licensed outlet in rural area."

The petitioners herein applied for grant of L-14 and L-14-A vends at Cart Road, Shimla, Subji Mandi-I, Shimla and Subji Mandi-II, Shimla. These vends are in the Urban area of Shimla. These vends were allotted to the petitioners and they started selling beer in these vends. On 28.4.2007 the Excise and Taxation

Department issued a notification amending the H.P. Liquor License Rules, 1986. Relevant portion of the notification reads as follows:

> "1.In rule 1, in the columns against L-14 & L-14-A the words "and beer" shall be deleted"

In terms of this amendment the petitioners now cannot not sell beer and were not permitted to lift beer, hence they approached this Court by way of present writ petition.

The petitioners in the petition have alleged that they had submitted the offer for license of the vends in question on the assumption that under the Himachal Pradesh Liquor License Rules they would be permitted to sell beer from these vends. It is their contention that they had a legitimate expectation that they would be permitted to sell beer in their retail vends for the entire period of the license. It is also contended that the respondents are estopped from amending the Rules after taking money from the applicants. It is further contended that the amendment is discriminatory and violative of Article 14 of the Constitution of India inasmuch as other retail vends as also Departmental Stores are still permitted to sell beer and even L-14 and L-14-A vends situated in Rural areas are permitted to sell beer but only the L-14 and L-14-A vends in Urban areas have been debarred from selling beer.

The stand of the respondents is that there is no fundamental right to engage in the trade of liquor and that the impugned notification has been issued and the Rules have been amended in exercise of the powers vested in the State Government under the Punjab Excise Act, 1914 as applicable to the State of Himachal

Pradesh. Reliance on behalf of the respondents is placed on the aforesaid quoted portion of the notice inviting applications in which it is mentioned that the beer shall be sold in retail from L-2 licensed outlet and from L-14 and L-14-A license outlet in Rural areas.

We have heard learned counsel for the parties and considered the facts of the case in detail.

It is not disputed before us that prior to the amendment of the Rules right from the year 1998 the license holders of L-14 & L-14-A retail vends of country spirit were permitted to sell beer. It is also not disputed that the Excise Announcements made before the allotment of vends especially Clause 4(1)(b) and Clause 38 of the Announcements quoted hereinabove clearly provided that a license in form L-14 for retail vend of country spirit would include permission to sell beer for consumption on and off the premises and similarly licensee holding license in form L-14-A for retail vend of country spirit off the premises could also sell beer for consumption off the premises. Clause 38 of the Excise Announcements also clearly provided that in the urban areas beer would also be sold in Departmental Stores in addition to other liquor vends like L-2, L-14, L-14-A etc. etc. As per the Excise Announcements and the Rules existing at the time when applications for grant of retail outlet were invited the position was very clear that holders of L-14 & L-14-A licensees could sell beer from the vends.

The reliance placed by respondents on the notice inviting applications in which it is mentioned that beer shall be sold in retail

from L-2 license outlet and from L-14 & L-14-A license outlet in Rural areas is totally misplaced. All that this condition in the notice states is that in Rural areas beer shall be sold from L-2, L-14 and L-14-A license outlets. As far as Urban areas are concerned Clause 38 of the Excise Announcements clearly provided that beer can be sold from retail vends including L-2, L-14, L-14-A, Departmental Stores etc. In the notice it was mentioned that in Rural areas beer would be sold in L-2, L-14 and L-14-A vends. This does not postulate or in any manner suggest that in Urban areas beer was not to be sold from L-14 & L-14-A vends.

No doubt the State has the power to make Rules and regulate the sale of liquor in the State. However, this power cannot be exercised to the detriment of the interest of the persons who have submitted their applications on a clear understanding that they would be permitted to sell beer from their vends. These persons like the petitioners may or may not have applied for the license in case at the time of the allotment of a license they had been informed that the L-14 and L-14-A vends were not allowed to sell beer. We are of the considered opinion that this condition could not be imposed at a later stage to the detriment of the petitioners.

We are aware and conscious of the fact that no person has a fundamental right or even a vested legal right to engage in the liquor trade. If there is a conflict between public interest and commercial interest of the liquor traders, the commercial interest of the liquor traders must give way to the larger public interest. The State

however has not placed on record any material to show that any public interest is served by debarring the licensees of L-14 & L-14-A vends in Urban areas from selling beer. It is clear that in Urban areas beer can still be sold in L-2, L-3, L-4, L-5 vends and also in Departmental Stores etc. If beer can be sold in Departmental Stores there is no reason why it cannot be continued to be sold in vends selling country liquor. By the impugned notification neither the consumption of beer shall be reduced nor the revenue shall increase. We had heard the matter on 28th May, 2007 and at the request of the learned Advocate General we had adjourned the matter twice on 28.5.2007 and 29.5.2007 to enable the learned Advocate General to obtain instructions from the Excise Department as to what is the rationale behind debarring the sale of beer from L-14 & L-14-A vends. Despite these two adjournments no suitable answer has been given and only reliance is placed on the notice aforesaid and the powers of the State to amend the Rules.

Keeping in view the aforesaid discussion we are of the considered view that the vested rights of the petitioners could not have been adversely affected by amending the Rules and the notification in question cannot be made applicable to the persons who have already submitted their applications for allotments of vends, had been allotted the vends and had paid the license fees on the assumption that they would be permitted to sell beer from their vends throughout the financial year. However, this notification

being within the powers of the State will be applicable from the next financial year.

We, therefore, dispose of the writ petition by holding that though the State Government is entitled to issue the impugned notification the same will not be applicable to those licensees like the petitioners, who had applied for, were granted and paid the license fee for L-14 and L-14-A vends prior to the date of issuance of the said notification. The notification can only apply to those vends which are allotted after 28.4.2007 the date of issuance of this notification. Petitioners are held entitled to costs of Rs.5000/-.

(Deepak Gupta),
Judge

May 30, 2007.
PV

(Surinder Singh),
Judge